

Designated Ethics Supervisor Handbook

**Alaska Executive Branch Ethics Act Manual
for Designated Ethics Supervisors**

June 2019

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I. INTRODUCTION

As a designated ethics supervisor, you serve an enormously important role in making the Alaska Executive Branch Ethics Act effective. Your role involves preventing violations of the Act, reporting on ethics activities, and investigating potential violations of the Act.

You help prevent violations by sharing your knowledge of the Act with the employees, board members, or commission members you serve and by making determinations to assist these officers in avoiding violations. By reporting on ethics activities, you help assure the public that the Ethics Act is working. When circumstances are disclosed suggesting violation of the Ethics Act, you investigate as appropriate, determine whether violations have occurred or may occur, and decide what actions are necessary to correct or avoid any violations.

This manual describes what the Ethics Act requires of you in performing these duties, and offers guidance on how to perform them effectively. It is not intended to be a substitute for your review of the code of conduct and procedures as set out in the Act.

The state ethics attorney at the Department of Law is available to provide advice to you on particular ethics matters or answer questions about the responsibilities detailed in this manual. The current ethics attorney is Assistant Attorney General Maria Bahr. She may be reached at 907-269-5275 or at maria.bahr@alaska.gov. She is assisted by paralegal, Jennifer L. Williams, who may be reached at 907-269-5275 or jennifer.williams1@alaska.gov. The mailing address and fax for both are as follows: Department of Law, 1031 W. 4th Avenue, Suite 200, Anchorage, AK, 99501, fax number 907-279-2834.

II. TRAINING AND EDUCATION

As designated ethics supervisor, you help prevent violations of the Ethics Act – and make your ethics duties more rewarding – by training and educating state public officers on the Act’s requirements. It is important that the public officers you serve know who you are and that you can advise them on ethics matters, hopefully before they become violations.

A. Resources.

There are a variety of resources for training and education on the ethics page of the Department of Law website: <http://law.alaska.gov/doclibrary/ethics/html>. These resources include:

- Copies of the Executive Branch Ethics Act and Regulations.
- A self-guided ethics training Power Point presentation.
- General guides explaining the Ethics Act – “*Ethics Information for Public Employees,*” “*Ethics Information for Members of Boards and Commissions,*” and “*Ethics Act Procedures for Boards and Commissions.*”
- A guide answering questions about the Ethics Act’s restrictions on employees’ outside employment – “*FAQ’s about Outside Employment.*”
- A guide addressing the ethics concerns when an employee seeks other employment to leave state service and the restrictions on post state employment.

The Department of Law also has Power Point presentations available for ethics classes. Contact the state ethics attorney if you are interested in the Power Point presentations.

Many advisory opinions interpreting the Ethics Act are available in Westlaw and on the department’s website, in the searchable online document library: http://law.alaska.gov/doclibrary/opinions_index.html.

B. Orientation for New Public Officers.

One goal of every designated ethics supervisor should be to assist public officers, new to state employees, to become familiar with the code of conduct and procedures in the Executive Branch Ethics Act.

New Public Employees:¹ New employees receive a lot of information, including information about the Ethics Act, when they first take a job in state service or return after working in the private sector. The state ethics attorney recommends that agency ethics supervisors coordinate with their human resources staff to ensure that, during a new employee’s initial months of service, he or she has reviewed the Ethics Act guidance and knows how to contact the agency ethics supervisor. The following are suggestions about how to make this happen.

- Introduce yourself to new employees, either by an individual or a group email sent out once a month. Routinely ask your human resources staff to

¹ The Ethics Act applies to all public employees regardless of classification. AS 39.52.960(2). A regulation, 9 AAC 52.990(b)(7), provides guidance on the applicability of the Act to certain special categories, such as temporary employees.

provide you with email addresses for new employees on a monthly basis. A simple message is included in Appendix A.

- Ask your human resources manager to provide a paper or email introduction with a message similar to that in Appendix A.
- Recommend that new employees review the self-guided ethics training Power Point program on the Department of Law website.

New Board and Commission Members: Upon appointment new members are provided information about the Executive Branch Ethics Act by the Governor’s Office of Boards and Commissions. The chair of a covered board or commission,² as ethics supervisor, should advise new members of the chair’s ethics responsibilities and ensure that each new member received copies of the guides. “*Ethics Information for Members of Boards and Commissions*” and “*Ethics Act Procedures for Boards and Commissions.*” A sample message is included in Appendix A. You may also refer new members to the Department of Law website for the self-guided ethics training Power Point program and other information.

III. REPORTING

As a designated ethics supervisor, you are responsible for two aspects of ethics reporting: (1) receiving and reviewing ethics disclosure reports from others, and (2) submitting reports to the attorney general.

A. Reports from Others.

The written disclosure reports you may receive from others include:

- Notifications of receipt of gifts;
- Notifications of receipt of gifts from other governments;
- Notifications of interests in state grants, contracts, leases, and loans;
- Notifications of outside employment and services; and
- Notifications of potential violations (or requests for ethics determinations).

Copies of the current disclosure forms are available on the Department of Law website: <http://law.alaska.gov/doclibrary/ethics.html>.

² The Ethics Act applies to all boards, commissions, authorities, and boards of directors of public or quasi-public corporations established by statute in the executive branch, including the Alaska Railroad. AS 39.52.960(4).

Most reports will come to you as the result of triggering events, such as the receipt of a gift. However, notifications of outside employment and services – only filed by executive branch employees (not board and commission members) – are due every years by July 1, as well as whenever there is any change in an employee’s outside employment or services. Each type of report is discussed in Part IV of this manual.

Most disclosure reports you received are **public documents**, but notifications of potential violations and requests for ethics determinations are **confidential**.

When you received a report, you should:

1. Ensure that it is complete and signed;
2. Review the information provided in the report carefully to determine whether it raises any concerns suggesting a potential ethics violation;
3. Request more information from the person submitting the report, if needed.
4. If the report is a notification of receipt of gift from another government, sign the notification and forward it to the Director of Administrative Services for the Office of the Governor;
5. Otherwise, consider whether to approve the disclosed gifts, interests, employment, or services, what do about a disclosed potential violation, or how to respond to the request for an ethics determination. (*See Part IV*);
6. Seek advice from the ethics attorney, if needed;
7. Make and record your determination on the report or in a separate attached memorandum³ if a detailed explanation is needed and sign the report;
8. Provide a copy of the signed report and determination to the person submitting the report; and
9. keep the original report and determination in an ethics file in your office.
10. As part of your quarterly report to the attorney general (*See Section III B*), send to the state ethics attorney (who reviews the reports on behalf of the attorney general) copies of any determinations you make that involve:
 - Disapproval – or conditional approval – of disclosed gifts, interests, employment, or services;
 - Notifications of potential violations; or
 - Requests for ethics determinations

³ A form is available on the Department of Law ethics webpage for this purpose but its use is not required.

If you are the designated ethics supervisor for a member of a board or commission, members must disclose conflicts of interest and potential violations orally at your board's or commission's public meetings. You or the entire board or commission must make a determination on the record whether the disclosing member may participate in consideration of the subject of the disclosure. The procedures for these disclosures and determinations are described in the guide: *Ethics Act Procedures for Boards and Commissions*, found on the Department of Law ethics webpage. The official record of your meetings, if preserved, provides a written record for this type of disclosure. Designated ethics supervisors of boards and commissions report oral conflicts of interests and potential violations and related determinations in their quarterly reports to the attorney general. (See Section III B)

B. Reports to the Attorney General.

As a designated ethics supervisor, you are responsible for submitting certain reports to the attorney general. In practice, you submit these reports to the state ethics attorney, who reviews them on behalf of the attorney general.

1. Quarterly Reports. (AS 39.52.260)

The Ethics Act requires that you report to the attorney general regarding the ethics disclosures address in each quarter. Therefore, every January, April, July, and October the ethics attorney provides you a reminder that your report is due within 30 days after the end of the preceding quarter.

Actions taken to address violations or potential violations: Your quarterly report should briefly describe the facts, circumstances, and dispositions of all written disclosures of potential violations of the Ethics Act you received and resolved during that quarter. Pending matters should be reported in the next quarter after you have made a determination. You report on matters disclosed by public officers regarding their own conduct or interests and matters reported by others about a public officer. The report should include **a summary of each determination** addressing:

- A notification of potential violation;
- A request for ethics determination; or
- Disapproval – conditional approval – of disclosed outside employment or services, gifts, or interests in your agency's grants, contracts, leases, or loans.

You should note if you received an advisory opinion from the state ethics attorney regarding a particular determination.

If you are a designated ethics supervisor for a board or commission, your report should also describe:

- Potential conflicts of interest declared orally at meetings during the quarter and how the potential conflicts were resolved.

Statistics about total matters reviewed: The attorney general and the Personnel Board, which oversees ethics matters, are also interested in the total number of ethics matters disclosed and addressed. As part of your quarterly report, you should fill out and submit the form provided in Appendix B reporting the **total number** of all disclosure reports received.

Submit your quarterly report to Paralegal Jennifer L. Williams, Opinions, Appeals, & Ethics Section, either by email to ethicsreporting@alaska.gov, fax (907) 279-2834, or regular mail: Department of Law, 1031 W. 4th Avenue, Suite 200, Anchorage, AK 99501.

- **Attach copies of the written notifications of potential violations, requests for ethics determinations and disapproved or conditionally approved disclosures and your written determinations.**
- Do **not** attach copies of **approved** disclosures of gifts, interests, and outside employment or services.
- **Attach your Quarterly Statistical Summary Form (form in Appendix B)**
- **If you have no determinations to report for a particular quarter, you must still send a memorandum stating that information with your Quarterly Statistical Summary.** Otherwise, the ethics attorney will not know whether you failed to report or simply have nothing to report.

Ethics Act regulations permit the executive director for a board or commission to file quarterly reports on behalf of the chair. (*See 9 AAC 52.130(b)*)

A sample quarterly report is included in Appendix B. Forms are available on the Department of Law website: <http://law.alaska.gov/doclibrary/ethics.html>.

Your quarterly reports are **confidential**. The state ethics attorney may seek clarification or provide feedback on particular determinations. The state ethics attorney, on behalf of the attorney general, also prepares summaries of the reports that are available to the public, with appropriate deletions to prevent disclosure of people's identities. The summary is provided to the Personnel Board along with a copy of your confidential report.

2. Other Reports (AS 39.52.310(a), (d) & (e))

If you receive a **written complaint** alleging that a public officer has violated the Ethics Act, you should forward it to the attorney general to the attention of the state ethics attorney. The state ethics attorney, on behalf of the attorney general and in consultation with you, will determine whether the matter should be addressed by the designated ethics supervisor or investigated by the Department of Law.

IV. DETERMINATIONS

The Ethics Act requires designated ethics supervisors to make determinations about the disclosure reports made by public officers. Determinations may involve, for example, approving gifts or disapproving outside employment or deciding appropriate steps to avoid a potential violation. The extent of the review of any particular matter will be dictated by the information provided in the disclosure and the matter reported. Once you have enough information to conclude that the disclosure should be approved or that an ethics violation may occur or may have already occurred, you should approve the disclosure or determine what steps must be taken to avoid, remedy or penalize a violation, as appropriate.

Determinations may require you to talk to the disclosing public officer to get additional details of the circumstances, to discuss the matter with the officer's supervisor, to collect pertinent documents, or to interview other employees. In some instances, the reports you receive may require a detailed investigation. Please refer to Part V of this manual. Ethics supervisors in consultation with their agency human resource managers should ordinarily address matters involving both disciplinary and ethics issues at the agency and then forward the file to the attorney general for review and possible additional action under the Ethics Act. For serious violations, you may decide to refer the matter to the attorney general for issuance of a complaint. Please call the state ethics attorney if you are uncertain how to proceed with an ethics matter.

A. Gift Disclosures (AS 39.52.130)

A public officer may not solicit or receive, directly or indirectly, a gift of any type that is a benefit to the officer's personal or financial interest in circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions or judgments.

Public officers should report any gift if the officer is concerned that the circumstances suggest an improper intention to influence the officer.

Public officers must report all gifts received having a value in excess of \$150 if the officer may take or withhold any official action that affects the giver or if the gift is in connection with the officer's governmental status.

An officer must also report gifts given to immediate family members if the officer knows or reasonably should know that the officer would have to report the gift if it had been given to the officer.

Gift disclosure forms are found on the Department of Law ethics webpage. **There are special rules for certain types of gifts.**

All gifts from registered lobbyists are presumed to be intended to influence the performance of the official duties unless the giver is an immediate family member of the recipient. (*See AS 39.52.130(a)*)

Occasional gifts valued at \$50 or less (except gifts from registered lobbyists) are presumed not to be given in circumstances suggesting an intention to influence official action. (*See 9 AAC 52.060(b)*).

Some gifts of transportation and lodging may be viewed as gifts to the state not the employee. (*See 9 AAC 52.060(b)*)

Gifts received by a public officer on behalf of the state from another government must be reported to the Office of the Governor, which determines appropriate disposition of the gift (*See AS 39.52.130(e)*)

Your Determination: In evaluating a particular gift, you do not have to determine a giver's actual intent. Rather, you must decide whether an impartial person could reasonably infer that the gift was intended to influence the performance of official duties and judgment. You should consider all of the circumstances, including the gift's value, any relationship between the public officer and the giver and the extent to which the public officer may take official action that affects the giver. The presumption stated in the statute regarding gifts from lobbyists permits you to consider the circumstances and conclude that a particular gift from a lobbyist may be accepted. The presumption state in the regulation regarding of occasional inexpensive gifts permits you to conclude that the circumstances suggest that a gift, although of lesser value, may not be accepted. An advisory opinion, found in Appendix C, provides additional guidance for evaluating the propriety of particular gifts.

If you approve receipt of a gift, you should sign the gift disclosure form indicating the approval. If you determine that a gift is improper, you should direct in a written determination that the gift be returned or paid for or disposed of in another manner. **You should give a copy of the approved form or your determination that the gift is**

improper to the disclosing public officer. Keep the original disclosure and determination in an appropriate file or binder with any accompanying documentation. You report to the attorney general on gift disclosures in your quarterly reports as stated in Part III B.

If the circumstances suggest a violation of the Ethics Act involving official action taken as the result of an improper gift, you should consult with the state ethics attorney regarding possible issuance of a complaint.

B. Outside Employment or Services (AS 39.52.170)

State employees often have other jobs or businesses and participate in volunteer activities. The State only has a concern about these activities if they are incompatible with or in conflict with a public employee's state duties. The ethics Act addresses this concern by requiring public employees to submit an annual disclosure by July 1 and updated disclosures as changes occur. In this way, you ensure that employee activities are compatible with official duties. **This requirement does not apply to members of boards and commissions.**

If you are a designated ethics supervisor for executive branch employees, you should remind these employees each June of their duty to report their outside employment and services. A sample reminder message, as well as the guide, *FAQ's about Outside Employment*, are included in Appendix D for your use.

The report is made on the *Outside Employment or Service Notification* form. A copy may be found on the Department of Law ethics webpage. It is to be submitted first to the employee's work supervisor for a recommendation because often the work supervisor is in the best position to understand whether the reported activity is incompatible. The supervisor will then forward the report to you as designated ethics supervisor for review.

Public employees must disclose the following information:

- Any compensated employment;
- Any volunteer activity, if any of compensation, such as payment for travel or meals, is received; and
- Any other volunteer or non-compensated work, if there is a possibility that such work conflicts with the employee's official state duties.

Your Determination: As the designated ethics supervisor, you review each employee's disclosure to make sure the reported outside activity is compatible with the employee's state job. In many cases, the absence of conflict will be readily apparent from

the report. In other cases, you may need to contact the employee and/or his or her work supervisor for more information about the nature of the employee's state responsibilities and outside employment or volunteer activities. Sometimes a supervisor will report problems or concerns when forwarding the employee's disclosure report.

In determining the compatibility of particular activities, you should consider the three factors outlined in 9 AAC 52.090:

- Whether the activity will take time away from the employee's official duties.
- Whether the activity inappropriately limits what the employee can do in his or her state job without triggering a conflict.
- Other circumstances suggesting an incompatibility or conflict with the employee's job.

If you determine that there is no incompatibility, you indicate your approval and sign the disclosure form. In some cases, you may note specific restrictions or instructions about the outside employment or volunteer activities. In rare instances, you may determine that the employee cannot participate in volunteer activity or outside employment if he or she wants to keep his or her state position. You should indicate your determination and sign the form but also provide a written determination for a determination limiting or disapproving the outside activity. **Once you make and record your determination, you must send a copy to the employee for his or her records and retain the original in an appropriate file or binder with any accompanying documentation. You report to the attorney general on outside employment and services disclosures in your quarterly report as stated in Part III B.**

C. Interests in State Grants, Contracts, Leases or Loans (AS 39.52.150)

Public officers and their immediate family members may not acquire, receive, apply for or have a personal or financial interest in most state grants, contracts, leases or loans if the public officer has any authority to take or withhold official action regarding the award, execution or administration of the matter. The Ethics Act requires public officers to report a personal or financial interest held by the officer or family member in a grant, contract, lease or loan administered by the agency the office serves. A form for this purpose is found on the Department of Law webpage.

Your Determination: You should review the information reported on the disclosure and evaluate whether the public officer has any authority regarding the state grant, contract, lease or loan in which the officer or the officer's family member has an interest. If you conclude that the officer has no authority over the matter, you should sign

the form as approved. If you conclude that the officer has authority over the matter or may take official action regarding it, you should notify the officer that he or she must immediately refrain from taking any action and determine what other steps are necessary to avoid or cure violation of the Ethics Act. There are two exceptions to the strict prohibition for competitively solicited grants, contracts and leases and certain loans. (See AS 39.52.150(b) and (c))

In the case of an interest held by a public employee, your authority to fashion a remedy is outlined in subsection D1 below. If a member of a board or commission has a **direct** interest in a state grant, contract, lease or loan awarded by the board or commission on which he or she serves, there is no ability to remove or reassign authority and refraining from official action does not remedy the potential violation in most instances. You should consult with the stated ethics attorney for advice on whether the member must resign or divest the interest or the matter must be withdrawn from consideration.

Once you make and record your determination, you must send a copy to the public officer for his or her records and retain the original in an appropriate file or binder with accompanying documentation. You report to the attorney general on disclosures of these interests in your quarterly reports as stated in Part III B.

D. Notifications of Potential Violations/Requests for Ethics Determinations/Conflicts of Interest (AS 39.52.210, 220, and 230)

A public officer must submit a *Notification of Potential Violation* form to his or her designated ethics supervisor identifying a matter that may result in a violation of the Act or may submit a *Request for Ethics Determination* addressing circumstances about which the employee is uncertain and needs ethics advice. When making either disclosure, the employee must refrain from taking any official action relating to the subject of the disclosure until you have made a determination about the matter.

You also may receive a *Notification of Potential Violation* from about someone other than the reporter. The Ethic Act permits any person to report a potential violation of the Ethics Act by a public officer. That report must be signed under oath and submitted in writing to the public officer's designated ethics supervisor. The State Ombudsman may also refer matters alleging potential ethics violations for agency review and action. In such cases, you should inform the Ombudsman of the progress of your investigation, if lengthy, and your determination.

Sometimes an employee or other person may report ethics concerns or allegations about another employee, but is either unwilling to do so in a signed disclosure or only does so anonymously. In such cases, you should make an initial inquiry to determine whether there is support for the allegations and if so, address them through your agency

disciplinary process unless the matter is of sufficient seriousness that you believe the attorney general should use a complaint.

Your Determination: You may be able to make a determination based on the information provided or you may need to investigate. (*See Section V*) You should ask for additional information from the disclosing public officer or discuss the matter with a supervisor or another public officer as necessary. You may need to review documents pertinent to the matter or interview others.

Except for disclosures and determinations made on the public record at meetings of boards and commissions, as noted below, notifications of potential violations and requests for ethics determinations and your determinations about them are considered **confidential**, except to the extent that you need to consult others to investigate the matter.

The Ethics Act specifies what you should do when you determine, after reviewing a report, that action is necessary to avoid a potential ethics violation.

1. **For Employees:** If you are the designated ethics supervisor for an executive branch employee and determine that a violation of the Ethics Act could exist or will occur, you should:
 - Reassign the employee's duties to cure the potential violation, if that is feasible; or
 - Direct the employee to divest or removed the personal or financial interests that give rise to the potential violation.

You must prepare a written determination and provide a copy to the disclosing employee. The original disclosure, determination, and related documents should be kept in your files. You report to the attorney general on these matters in your quarterly report. (*See Part III B*)

2. **For Board and Commission Members:** If you are the designated ethics supervisor for a member of a board or commission, you may have to make determinations about disclosed **conflicts of interest and potential violations** in response to members' written disclosures or oral disclosures made at your public meetings or notices submitted by another. If you determine that a violation of the Ethics Act will occur if the disclosing member participate in the consideration of a particular matter, you should direct the member to refrain from voting, deliberating, or participating in the matter.

All member conflicts, including prior written disclosures, must be made a part of the record of the public meeting addressing the matter to which the disclosure relates. If you made a determination regarding the participation of the member in advance of the meeting, you must state your determination for the public record.

With respect to all determinations, regarding member conflicts whether disclosed in advance or during public meeting, any member of the board or commission may object to your determination. If objection is voiced, then the members of the board or commission present at a meeting – except the member involved in the potential conflict or violation – vote on whether the involved member may participate, unless the attorney general, through the state ethics attorney, has advised that the involved member’s participation would violate the Ethics Act. The board or commission’s vote determines whether the member may participate.

If tapes or transcripts of your meetings are preserved and there is a method for identifying where reference to the conflict declaration and determination may be found this record may serve as a written determination on a conflict. You may also record your determination in writing. There is an optional determination form available on the Department of Law ethics webpage. You will want to ensure that all conflicts disclosed at meetings are noted in the meeting minutes to facilitate your quarterly reporting. (*See Part III B*)

Please consult the guide, *Ethics Act Procedures for Boards and Commissions*, available on the Department of Law ethics webpage, for more detailed discussion of board and commission procedures.

V. INVESTIGATION

As a designated ethics supervisor, you may need to investigate potential ethics violations. The need to investigate may arise because you do not have enough information to address the issues raised in disclosure reports you receive, or because the attorney general or state ombudsman refers an ethics complaint to you for resolution.

In either case, the purpose of your investigation is to determine (1) whether an ethics violation has occurred (or may occur) and (2) the appropriate action to correct or prevent the violation.

Therefore, you want to be sure that your investigation is **thorough** and **well documented**. You also should conduct investigations **confidentially**, except to the extent you need to contact others to gather information and documents. You should caution those whom you contact that the matter is considered confidential and should not be discussed with others.

If the matter involves misconduct that may result in discipline, you will also want to familiarize yourself with the subject employee's rights under a collective bargaining agreement or other personnel rules and ensure that related procedures are followed. **You should seek guidance from your agency's Human Resource Manager at the Department of Administration.** You may also ask your Human Resource Manager to assist in or conduct the investigation, if your time and resources to promptly address the matter are limited and, particularly, if you anticipate that significant discipline may be imposed.

Every investigation will be different, depending on the potential violation you are investigating. Nonetheless, you can use the same **methods** to achieve a thorough and well-documented investigation each time.

1. Start with the Document: Start by reviewing carefully the document that triggers the need for the investigation. Compare it the Ethics Act to identify potential violations.

2. Follow up with the Filer: If you need additional information from the person submitting a disclosure or you have questions about the allegations in a notice of potential violation submitted by someone about another person, contact the person who submitted the document for answers. Send a written acknowledgment to anyone submitting a notice alleging ethics violation by someone else telling the filer that you have received the notice, even if you have no questions for that person.

3. Set up an Investigation File: Create a new file for each investigation, so you will be able to keep and find records of your investigation. If you have a series of investigations that involve very minor investigative work, you might choose to put records of those investigations in a single file, but you should have some system (i.e. dividers or tabs and a log) that permits you to locate the records related to each investigation. You might also choose to use an electronic file rather than a physical file.

4. Make a Plan: Develop a plan – preferably in writing – for investigating the potential violation. In your plan, identify:

- The Ethics Act provisions that were potentially violated;
- The facts necessary to establish violations of those provisions;
- The documents you need to obtain; and
- The people you need to interview

A written plan will give you a checklist to use and help ensure that the investigation is thorough. Your plan does not need to be very detailed or long. It should be a guide that will help you investigate the matter efficiently.

Of course, you may need to change your plan later, based on information you obtain during the investigation. Nonetheless, by noting on your written plan why you made changes to the plan – e.g., why you decided not to interview a particular person – you will create a better record for explaining the conclusions you reach when you complete the investigation.

You may also decide to include in your plan a schedule for the investigation if, for example, you need to obtain certain documents before talking to a particular person. Your plan should also help you investigate a matter in a timely manner.

Development of a plan may also help you decide that you need help from your Human Resource Manager to conduct an investigation.

5. Execute the Plan: Once you have decided what you need, to get it. Obtain the documents and talk to the people who have information you need to investigate the potential violation. For both you will likely be looking for the answers to five questions: Who? What? When? Where? Why? You are seeking the facts to determine whether a violation has occurred or may occur.

Remember to document these contacts in your investigation notes, memos, or log and keep the information collected in the investigation file.

If you encounter resistance to your efforts to obtain documents and information – particularly from sources outside state government – you may ask for assistance from the state ethics attorney.

6. Keep the Investigative Record: Keep notes (such as a log) of all contacts you make – phone calls, conversations, e-mail exchanges, letters, etc. – as part of the investigation, including the dates, times, and contents of the communications in a paper or electronic investigation file. Also, keep copies of the e-mail messages, letters, and other documents you receive or send as part of your investigation, along with records of when and from whom you received them. Remember to place these copies, as well as your notes or log, in your investigation file.

Tape recording phone calls and conversations will provide you a more reliable record of the contents of the calls and conversations than your own notes will provide but you may decide that recording particular calls or conversations would be counterproductive or otherwise inappropriate. If you decided to record phone or in-person conversations you have as part of an investigation, you should let the other participants know that you are recording them. Although you may not be legally obligated to notify them, you should notify them as a matter of courtesy. If you have any questions about the legality of recording conversations, you should contact the state ethics attorney.

7. Re-evaluate the Plan: Periodically re-evaluate your plan to decide whether you need to change it. For example, consider whether there are potential violations that you should add to your investigation or other witnesses that you need to contact. If you believe the matter involves a serious violation of the Ethics Act, you may want to consult with the state ethics attorney.

8. Make your Determination: Once you complete the investigation, you must determine whether a violation occurred or might occur and, if so, what steps to take to correct or avoid the violation. To make the determination, you should review your investigation file and prepare a written determination discussing:

- The reason for the investigation;
- The potential violations investigated;
- The documents gathered and witnesses interviewed;
- The conclusions reached regarding the potential violations; and
- The appropriate action for correcting or preventing the violations.

For correcting or preventing ethics violations there are some actions, you can take yourself and some actions that the Ethics Act authorizes others to take. In addition to discipline that may be imposed for employee misconduct generally, the Ethics Act authorizes you, as designated ethics supervisor, to take the following actions to correct or prevent a violation by a public employee.

- Reassign duties to cure the employee's potential violation, if feasible; or
- Direct the divestiture or removal by the employee of the personal or financial interests that give rise to the potential violation.

To correct or prevent violations by a member of a board or commission, a designated ethics supervisor may direct the member not to participate in a particular matter. The other members of the board or commission may vote to overrule that direction, unless the attorney general has advised that the member's participation would violate the Ethics Act.

In some cases, you may conclude that these actions are insufficient to address violations. If you are an agency ethics supervisor, you may recommend that your agency discipline the employee. All ethics supervisors may also refer matters to the attorney general who may initiate a complaint (if one has not already been filed) and take other action to correct or prevent a violation or impose penalties. (*See Part VI*)

9. Give Notice of your Determination: Send copies of your determination to the public officer investigated and to the state ethics attorney (for the attorney general) in your quarterly report. As a courtesy, you should also provide a brief report to the person initiating the matter, if other than the subject. Keep a copy of your determination in the investigation file.

10. Ask for advice if you need it: At any stage of the process, the state ethics attorney is available to assist you. If you need assistance with your investigation plan, investigation or determinations, contact the ethics attorney.

VI. COMPLAINTS

The Ethics Act permits the attorney general to initiate a complaint or treat as a complaint any matter disclosed by a current or former public officer. Any person may also file a complaint regarding the conduct of a current or former officer. The Act specifies the procedure to be followed in addressing a complaint. Special procedures apply if a complaint names the governor, lieutenant governor, or the attorney general. (*See Article 4 of the Ethics Act, AS 39.52.310-3960*)

A complaint must be signed under oath and contain a clear statement of the details of the alleged violation. **The initiation and investigation of a complaint are confidential, unless the subject waives confidentiality.**

Upon receipt of a complaint, the state ethics attorney or another assistant attorney general, on behalf of the attorney general, determines whether the complaint is properly completed and states allegations, which if true would constitute a violation of the Ethics Act. The ethics attorney may ask the complainant for additional information before accepting a complaint for investigation. If the ethics attorney determines that a complaint does not allege violations warranting an investigation, the complaint is dismissed with notice to the complainant and the subject of the complaint.

The attorney general may refer a complaint to the subject's designated ethics supervisor for investigation and resolution.

If a complaint is accepted for investigation the state ethics attorney must serve a copy of the complaint on the subject of the complaint for a response. The ethics attorney will then investigate to determine whether a violation has occurred. Violations may be investigated within two years after discovery of the alleged violation. If, after investigation, the ethics attorney concludes that there is no probable cause to believe that a violation has occurred the complaint is dismissed.

If the ethics attorney concludes that a violation has occurred, the ethics attorney may recommend action to correct or prevent further violation and seek to resolve the

matter with the subject. If the ethics attorney finds that there is probable cause to believe that a violation has occurred or a violation cannot be corrected or that the subject of a complaint has failed to comply with recommended corrective or preventative action, the ethics attorney will issue **a public accusation**. The subject must answer the public accusation, which may lead to a public hearing.

If the subject of the complaint admits to a violation, the matter is referred to the Personnel Board for imposition of penalties.

If the subject denies the accusation, the state ethics attorney refers the matter to the Personnel Board. The board notifies the chief administrative judge of the Office of Administrative Hearings who appoints an administrative law judge to serve as hearing officer to conduct the hearing. The parties to the hearing are the attorney general and the subject who may be represented by counsel. Each party has the opportunity to be heard and to examine witnesses. Following the hearing, the hearing officer will submit a report detailing findings of fact, conclusions of law, and recommendations to the Personnel Board.

The parties may protest the hearing officer's report in written briefs submitted to the Personnel Board. The board may take action to augment the record. The board will thereafter take action to adopt or amend the hearing officer's report. It imposes penalties where a violation is found, or issues a written order of dismissal with notice to the parties.

The subject of an accusation may appeal the Personnel Board's action to the state superior court.

Actions that the Ethics Act authorizes the attorney general and the personnel board to take include:

- Ordering the person to stop engaging in any official action related to the violation;
- Recommending that the employing department discipline the person (if the person is the employee), including termination;
- Seeking removal of the person from the board or commission (if the person is a member of a board or commission);
- Requiring establishment of a blind trust or forfeiture (if the person is an employee);
- Requiring restitution;
- Voiding a state grant, contract, or lease entered into a violation of the Ethics Act;

- Voiding state action taken in violation of the Ethics Act;
- Recovering a fee, compensation, gift, or benefit received by a person as a result of a violation of the Ethics Act;
- Imposing civil penalties of up to \$5,000 for each violation of the Ethics Act;
- Requiring the person to pay up to twice the financial benefit realized from a violation of the Ethics Act; and Pursuing criminal prosecution

The Department of Law prepared this manual to provide guidance to designated ethics supervisors in fulfilling their responsibilities under the Executive Branch Ethics Act. We hope it will prove to be a handy reference for you. We welcome all questions and comments or suggestions for additions and improvements.

State Ethics Attorney

APPENDIX A

Sample Message to New Public Employees
(Revise as appropriate to your agency)

Welcome to the Department of [*insert your agency/department here*]. In addition to serving as [*state title*], Commissioner [*Insert Commissioner's name*] has appointed me to serve as the designation ethics supervisor (DES) for the Department. It is my job to answer your questions about the Executive Branch Ethics Act and its requirements. I also review employee ethics disclosures and make determinations about ethics matters. My goal is to help you resolve ethics concerns before they become ethics violations.

[*You have previously received a copy of*] [*Attached is*] the guide, *Ethics Information for Public Employees*. Please take a few minutes to review it. This guide and the ethics disclosure forms are found on the Department of Law ethics webpage along with other information about your obligation under the Ethics Act. I encourage you to check it out.

I can be reached at [*phone number*] or [*email address*] or stop by my office at [*location*]. Forward disclosures to [*address*].

Sample Message to New Board and Commission Members
(Revise as appropriate to your board and/or commission)

Welcome to the [*name of board or commission*]. I am the current chair and serve as the designated ethics supervisor (DES) for all members. My responsibilities as DES include answering your questions about the Executive Branch Ethics Act and its requirements. I also review ethics disclosures and make determinations regarding participation when you declare a conflict of interest. My goal is to help you resolve ethics concerns before they become ethics violations.

If you have not yet received the guides, *Ethics Information for Members of Boards and Commissions* and *Ethics Act Procedures for Boards and Commissions*, please let me know and I will forward copies to you. Please take a few minutes to review them. These materials, as well as the ethics disclosure forms, are also found on the Department of Law ethics webpage along with other information about your obligations under the Ethics Act. I encourage you to check it out.

I can be reached at [*phone number*] or [*email*]. Forward disclosures to [*address*].

APPENDIX B

Sample Quarterly Report for Agency DES

MEMORANDUM

State of Alaska

Department of Law

TO: Jennifer L. Williams
Paralegal I
Office of the Attorney General
Opinion, Appeals, and Ethics Section

DATE:
FILE NO.:
TEL. NO.:

FROM: Maria Bahr
State Ethics Attorney &
Department of Law DES
Office of the Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

SUBJECT: Executive Branch Ethics Act
AS39.52 Quarterly Report
[Insert Quarterly Date
Range]

*****SAMPLE LANGUAGE – PLEASE COPY ONLY THE PARTS THAT APPLY
ONTO YOUR AGENCY LETTERHEAD*****

As designated ethics supervisor for the [agency/department name], I wish to advise you that I have received no notifications of potential violations or requests for ethics determinations under the Ethics Act (AS 39.52) and have made no written determinations for this quarter.

OR

As designated ethics supervisor for the [agency/department name], I have received [No. of] notification(s) of potential violation(s) and [No. of] requests for ethics determinations under the Ethics Act (AS 39.52). I have attached a copy of each notice or request received, along with my written determination for review by the attorney general. I [did] [did not] receive an advisory opinion from the attorney general.

Sample Quarterly Report for Board and/or Commission DES

MEMORANDUM

State of Alaska

Department of Law

TO: Jennifer L. Williams
Paralegal I
Office of the Attorney General
Opinion, Appeals, and Ethics Section

DATE:
FILE NO.:
TEL. NO.:

FROM: Maria Bahr
State Ethics Attorney &
Department of Law DES
Office of the Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

SUBJECT: Executive Branch Ethics Act
AS39.52 Quarterly Report
[Insert Quarterly Date Range]

*****SAMPLE LANGUAGE – PLEASE COPY ONLY THE PARTS THAT APPLY ONTO YOUR AGENCY LETTERHEAD*****

As designated ethics supervisor and chair [*executive director*] for the [*name of board and/or commission*], I wish to advise you that I have received no notifications of potential violations or requests for ethics determinations under the Ethics Act (AS 39.52) and have made no written determinations for this quarter.

OR

As designated ethics supervisor and chair [*executive director*] for the [*name of board/commission*], I have received [*No. of*] notification(s) of potential violation(s) and [*No. of*] requests for ethics determinations under the Ethics Act (AS 39.52). I have attached a copy of the notices and requests along with my written determination(s) for review by the attorney general. I [*did*] [*did not*] receive an advisory opinion from the attorney general.

AND

Except as addressed above, no other [*board member/commission*] disclosed a potential conflict of interest at a recorded public meeting during this quarter.

OR

In addition to the above, at the [*date*] meeting, [*Board member/Commission member*] disclosed a potential conflict with respect to [*insert brief description*]. [*S/He refrained from participation*] or [*I determined s/he could/could not participate*] or [*The Board/Commission members voted to permit/not permit participation.*]

Ethics Supervisor Quarterly Statistical Summary

Reporting Period _____

Reporting Agency, Public Corporation, Board, and/ or Commission

<u>Type of Disclosure</u>	<u>Number Reviewed</u>
---------------------------	------------------------

All Agencies, public corporations, boards, and/or commissions:

Notices of Potential Violation	_____
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Requests for Ethics Determinations	_____
------------------------------------	-------

Gifts	_____
-------	-------

Gifts from Other Governments	_____
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Agencies Only:

Outside Employment or Services	_____
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Public Corporations, Boards/Commissions Only:

Conflicts of Interest stated orally at board/commission Meetings	_____
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**Please, report the total number of written disclosures in each category, regardless of disposition. If you have nothing to report for each/any of the columns please put a zero in the column for that category. You need not to report informal oral or email contacts. Only those disclosures submitted on ethics disclosure forms.*

***Attach this summary to your regular quarterly report.*

APPENDIX C

Office of the Attorney General State of Alaska
File No. 663-00-0156
*1 March 20, 2000

Subject: AS 39.52.130 Gifts to Public Officers

The Honorable Bruce M. Botelho
Attorney General

You have asked for a summary of the Department of Law's ("department's") interpretation and guidance regarding [AS 39.52.130](#), gifts given to public officers. The Executive Branch Ethics Act ("Ethics Act") provides as follows:

A public officer may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the officer's personal or financial interests, under circumstances in which it could reasonable be inferred that the gift is intended to influence the performance of official duties, action, or judgment.

[AS 39.52.130\(a\)](#). If a public officer receives a gift with a value in excess of \$150, and either the public officer may "take or withhold official action that affects the giver" or "the gift is connected to the public officer's governmental status," then the public officer must inform his or her designated ethics supervisor of the gift within 30 days of its receipt. [AS 39.52.130\(b\)](#). The designated supervisor, who may seek guidance from the attorney general, determines whether acceptance of the gift is prohibited. [AS 39.52.130\(c\)](#). The requirement that the gift be disclosed does no establish that its receipt constitutes a violation, it simply triggers review and a determination by the designated supervisor.

The department has consistently interpreted the phrase "under circumstances in which it could reasonably be inferred" as establishing a reasonable person standard. Thus, the department does not ask whether *in fact* the giver is trying to influence the public officer. See, e.g., 1999 Inf. Op. Att'y Gen. at 8 (223-98-0210; March 10) ("inquiry does not hinge on any showing of actual intent"); 1996 Inf. Op. Att'y Gen. at 2 (663-96-0360; March 21) (tips received by state employee would support inference of intent to influence even though no wrongdoing by employee occurred). Additionally, the department does not ask whether anyone, including the most suspicious citizen, could possibly view the fits as intended to influence the officer. See 1995 Confidential Memorandum from this office to Commissioner (August24) (absent facts suggesting otherwise, wedding gifts of moderate value are intended in celebration of wedding of friends and do not support inference of intent to influence official action).

The statute looks to whether the gift is given “*under circumstances* in which it could reasonable be inferred that the gift is intended to influence the performance of official duties, action, or judgment.” [AS 39.52.130\(a\)](#) (emphasis added). The decision, then must turn on the facts and circumstances of the gift, including its value, the relationship between the public officer and the giver, and the extent to which the public officer can take or withhold official action that affects the giver. Accordingly, full disclosure of facts is important in enabling a supervisor to determine whether the circumstances surrounding a gift support a reasonable inference that it is intended to influence official action. The following are inquiries that the department advises designated supervisor to make in evaluation whether a gift is prohibited.

***2 1. Can the public officer take or withhold official action that affects the giver?** At one end of the spectrum, if the officer can take no action that affects the giver there is little to support an inference that the gift was intended to influence the officer, and the gift is probably not prohibited. [FN1] At the other end, a reasonable inference can be made that a gift is intended to influence a public officer if an important decision is currently pending directly before the officer. The inference would be even stronger if the giver did not know the officer personally, and the gift was of considerable value. Other relevant questions are what kind of action the officer could take that would affect the giver, and of what importance the action would be to the giver. Is a gift prohibited if no action is currently pending, but could be taken in the future to affect the giver? Again, it depends. A giver may generously bestow gifts on a public officer to develop and maintain friendly relations, with the intent that when policy decisions are made in the future, the officer will be favorably disposed to give more weight to the giver’s viewpoint. Those facts could support a reasonable inference that the gifts were intended to influence the officer. The gift is not necessarily prohibited, however, if the giver simply intends to maintain a cordial working relationship with the public officer.

2. Was the gift given to the public officer in his or her personal or professional capacity? This can be a difficult question to answer, particularly where both a professional and a personal relationship exist. The giver may have a friendship with the officer that predates the officer’s appointment to state service. Again it is useful to identify the two ends of the spectrum. If the giver has been friends with the public officer for years, and they have always exchanged birthday gifts of a certain value, and no decisions are pending before the officer that would affect the giver, we would be unlikely to find an inference that a birthday gift was intended to influence the officer. At the other end, if the giver had never given a gift to the officer before, and the gift solely to an officer before whom an important decision was pending, a reasonable inference would exist that the gift was intended to affect the decision-making of the officer. If many people receive the same gift, some of whom are public officers and some of whom are not, the inference that the gift was intended to influence would be weakened. If the public officer has a friendship with the giver and is uncertain in which capacity the gift was given, the public officer should so state when disclosing the gift.

3. What is the value of the gift? Since January 1, 1999, gifts with a value in excess of

\$150 must be disclosed (if other requirements are met). [FN2] The legislature's identifications of a threshold value reflects a policy that gifts of lower value are unlikely to be intended to influence judgment. The threshold value also constitutes the legislature's recognition that, within a certain range, it is neither uncommon nor improper for individuals or organizations to provide meals, gifts, or entertainment to recognize, honor, or be cordial to a public officers. On the other hand, the threshold value clearly establishes that the department and other agencies are not free to make such an assumption as to gifts of a value above the threshold. Disclosure, analysis, and determination must be made if the value is above \$150 and the gift is either connected to the public officer's governmental status or the officer may take or withhold official action affecting the giver. As a general principle, the greater the value of the gift, the stronger the influence that it was intended to influence the public officer. In addition to inquiring into the value of a gift, the designated supervisor may inquire into frequency. A designated supervisor's determination could change if a gift which by itself did not support an inference of intent to influence was, in fact, one of a series of gifts that, in the aggregate, constituted substantial value. This observation underscores the need for the facts and circumstances to be provided to the designated supervisor.

*3 In summary, this office has consistently advised that whether a gift is prohibited turns on the facts and circumstances of the gift giving. The questions is not whether the public officer or the giver thinks the gift is intended to influence the officer, the focus is on whether, under the circumstances, an impartial person could reasonably infer that the gift was intended to influence the officer's performance. If facts or circumstances exist that either support or weaken the inference, the public officer should provide that information to the designated supervisor.

Please let me know if I can be of further assistance.

Janice Gregg Levy

Assistant Attorney General

[FN1]. We use the qualifying language "probably" because unusual facts could alter the analysis.

[FN2]. Before that time, the threshold value for disclosures was \$50. The increased value permits more gifts in the category of "social functions" to be unreported and suggests that the legislature recognized that most gifts of meals and entertainment are not intended to influence public officer's decision making.

2000 Alaska Op. Atty. Gen. 21, 2000 WL 875887 (Alaska A.G.)

END OF DOCUMENT

APPENDIX D

FREQUENTLY ASKED QUESTIONS OUTSIDE EMPLOYMENT and VOLUNTEER SERVICES

State employees often have other jobs or businesses and participate in volunteer activities. The state has no interest in these activities unless they are incompatible with or conflict with an employee's state duties. The Executive Branch Ethics Act addresses this concern.

1. Why do I have to disclose outside employment?

The Ethics Act requires you to submit an annual disclosure by July 1 and update as changes occur. You submit your disclosure through your work supervisor to your agency's Designated Ethics Supervisor for review. In this way, we ensure that employee activities are compatible with official duties.

2. What do I have to disclose?

- Any compensated employment;
- Any compensated services benefiting a business or organization you are involved with;
- Any volunteer activity, if you receive any type of compensation, such as payment for travel or meals; and
- Any other volunteer or non-compensated work, if there is a possibility that such work conflicts with your official state duties.

3. What does "outside employment" include?

- Any employment, services, or work for which you are paid, but not your state employment.
- Examples: a job with another employer, work as an independent contractor, and work in your own business.

4. Where does the Ethics Act address volunteer activities?

The statute (AS 39.52.170(a)) restricts public employees from providing services that benefit a personal interest if those services are incompatible or in conflict with the proper performance of official duties. The companion regulation (9 AAC 52.090) clarifies that "service" includes volunteer activities.

5. Do I have to list all my volunteer activities or memberships in organizations?

No. You only need to disclose volunteer service if it is possible that your service may conflict with your official duties or you receive compensation. If your volunteer service is with an organization or for an activity that has no relationship to, or overlap with, your official duties and you receive no compensation, you do not have to disclose this volunteer's service. When deciding what to report, consider the scope of your official duties and the specific volunteer activity you do. If you have a volunteer interest that is closely related to your official work duties, you should file a disclosure.

6. I volunteer my services to an organization that works on issues similar to those before my department. Do I have to discontinue my membership?

Not necessarily. The Ethics Act recognizes that public officers have outside interests. Membership in an organization with interests or issues similar to those of your department itself does not constitute a conflict. However, if you actively volunteer to work on issues for the organization related to your department's responsibilities, you must tailor your activities to ensure no conflict exists with your official duties. Otherwise, your participation will likely be disapproved.

Please keep in mind that the purpose of the disclosure is to identify potential conflicts, provide you the opportunity to design your volunteer efforts to eliminate conflicts, and create a record of compliance with the Ethics Act if questions are asked or complaints are brought to the Department suggesting that you have a conflict.

7. Do I need to disclose activities related to my rental property?

Possibly. You do not have to disclose rental property if someone else manages the day-to-day work of advertising the property for rent, screening prospective tenants, communicating with tenants and arranging or doing repairs. If you provide these services instead of having someone else do them, you should submit the disclosure because you are engaging in outside services to benefit a financial interest and are compensated by the rents.

8. Do all employees have to file? Are there exceptions?

All employees who are currently involved in outside employment, services, or volunteer activities, as described above, must file a disclosure by July 1 each year. Employees with no outside employment, services, or reportable volunteer activities do not need to file a disclosure. If you take a second job or provide paid services, you submit a disclosure at that time.

9. My outside employment or volunteer activities have not changed since I filed last June. Do I still have to file this June?

Yes, an annual disclosure is required whether or not there has been a change from the previous year's report.

10. What if my employment situation changes during the year?

If your outside employment or volunteer service changes during the course of the year you are required to file a notice of the change in a timely manner. A good rule of thumb is to file within 30 days of any change to ensure compliance. You may also submit the disclosure in advance if you have any concern whether an outside activity will be approved.

11. How do I file?

Use the ethics disclosure form titled "*Outside Employment or Service Notification*". The form is available at <http://law.alaska.gov/doclibrary/ethics.html>, the Department of Law's ethics webpage, or from your Designated Ethics Supervisor. Complete the form with enough information so that the ethics supervisor will understand the kind of work or service you do when you do it, and who employees you or to whom you provide services. Your work supervisor will forward it to your Department's Designated Ethics Supervisor or return it to you, so you may do so.

12. What happens to the disclosures I file?

The Designated Ethics Supervisor reviews your disclosure to make sure your outside activities are compatible with your state job. You may be contacted for more information about the nature of both your state responsibilities and your outside employment or volunteer activities. If there is no conflict with your state job, the Ethics Supervisor signs the form and returns a copy to you for your records. In some cases, you may receive a memo with specific restrictions or instructions about your outside employment or volunteer activities. In rare instances, you may be told you can't participate in the volunteer activity or outside employment if you want to keep your state position. Your original disclosure is archived in your official personnel file.

13. How is a conflict determined?

Your Designated Ethics Supervisor considers the following:

- Whether the activity will take time away from your official duties;

- Whether the activity inappropriately limits what you can do in your state job without triggering a conflict; and
- Other circumstances suggesting an incompatibility or conflict with your job.

14. What can I do to help the annual reporting go smoothly?

You should provide enough information about your outside employment, including when you do this work, so that your ethics supervisor can evaluate whether there is a conflict with your official state duties. If you are a consultant or independent contractor, you need to attach a list of your clients.

15. Where can I get more information about the Ethics Act?

The Department of Law's website at <http://law.alaska.gov/doclibrary/ethics.html> has guidance available addressing other topics with examples to explain the topics. You may also contact your department's Designated Ethics Supervisor.

WHEN IN DOUBT, DISCLOSE!